DOCUMENT RESUME

ED 482 442 SO 035 459

AUTHOR	McJunkin, Kyle Stewart
TITLE	Sacred Acts, Secular Spaces: Why Public Schools Should Follow a Policy of Religious Accommodation.
PUB DATE	2003-03-00
NOTE	39p.; Master of Divinity Thesis, Harvard University.
PUB TYPE	Dissertations/Theses - Masters Theses (042) -- Opinion Papers (120)
EDRS PRICE	EDRS Price MF01/PC02 Plus Postage.
DESCRIPTORS	Educational Policy; *Public Schools; *Religion; *State Church Separation; Student Needs
IDENTIFIERS	Historical Background; Religious Practices; Supreme Court; United States Constitution

ABSTRACT

Religion has a positive role to play in institutions of learning. Public schools should not be afraid to openly explore ways of accommodating religious practices. This thesis aims to challenge and change those attitudes that uncritically push for the strict separation of church and state. The thesis examines the development of religious diversity and the historical relationship between religion and education. It examines the relevant Supreme Court cases that deal with issues of public education and religious accommodation. The thesis concludes with observations about the problems of accommodation as well as possible solutions. Includes 53 notes. Contains a 14-item bibliography. (BT)

Reproductions supplied by EDRS are the best that can be made
from the original document.

ED 482 442

Sacred Acts, Secular Spaces:
Why Public Schools Should Follow a Policy of Religious Accommodation

by

Kyle Stewart McJunkin

A thesis submitted in partial fulfillment of
the requirements for the degree of
Master of Divinity

Harvard Divinity School
2003

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL HAS BEEN GRANTED BY

K. S. McJunkin

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

1

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

SO 035 459

BEST COPY AVAILABLE

McJunkin, Kyle Stewart

Preface

Three years ago I came to Harvard Divinity School with a specific objective—I wanted a theological education. Having already worked for three years in the technology industry, I came to a point in my career where I saw myself doing something radically different and I felt drawn to consider a career in secondary education. While my interest in high school teaching came about through several volunteer organizations that I worked with while living in San Francisco, my attraction to the study of religion came from a more personal place.

With the fast pace of corporate life and its emphasis on product and profit, I often found myself reflecting critically on what it was exactly that I saw myself doing. The foundations of my faith felt feeble when I attempted to find meaning in the work I was engaged in. Nothing in my background really prepared me for this challenge. Through my volunteer work with children, I began to feel more strongly the impulse to study religion and explore a vocation to the ministry, but I knew that meant pursuing a theological education. So, after a period of discernment and the frequent advice-giving of friends, I decided to come to Harvard.

During the course of my studies, I found that my interests and focus on secondary education changed. My work as a chaplain and advisor to the Gay, Lesbian, Bisexual and Transgendered undergraduate community, for example, showed me a path of ministry that used both my pastoral and professional skills in a way I had not previously anticipated. At the time of writing this preface, I plan to enter a Ph.D. program at the University of California Los Angeles in Education with a focus on Religion and Higher Education.

It is in keeping with my original interest in religion and secondary education, as well as my current academic and vocational plans, however, that I write my masters thesis

on a subject of continuing and deep abiding interest. Simply put, I believe religion has a positive role to play in our institutions of learning. It is my hope that parents, educators and those in the legal profession, will come to appreciate, and even value, the formative role it has in the lives of our students. Public schools should not be afraid to openly explore ways of accommodating religious practices. I hope this paper will begin to challenge—and change—those attitudes, which uncritically push for the strict separation of church and state.

Kyle Stewart McJunkin
Cambridge, Massachusetts
31 March 2003

Introduction

On November 28, 2001, the governing board of Chicago's public school system adopted a district-wide policy that directed its school administrators "to accommodate student religious practices provided that such practices can be accommodated in a manner which does not violate the Establishment Clause of the U.S. Constitution, and to the extent that the accommodation does not place an undue burden on the sc hool."[1] The Chicago school district's decision to allow students the opportunity to engage in religious practices is unusual, since public schools have generally steered away from this level of explicit physical accommodation. There have been longs tanding concerns about the constitutional permissibility of schools allowing religious content or activities on their campuses. However, the Chicago policy came into effect only when school principals requested clarification from the district legal depa rtment about whether it was lawful to grant Muslim students time-off from class instruction so that they could engage in devotional exercises.[2] Generally, public schools have shown a reluctance to embrace a broad accommodation policy. In recent years, their efforts to accommodate have included arranging substitute food items for students with dietary restrictions, permitting religious clubs to meet on school property during non-in struction time, granting excused absences for religious holidays, and exempting students from instructional material that is objectionable on religious grounds.[3] Many of these arrangements, although done in the interes ts of respecting the spiritual needs of the students, do not reflect any national consensus on how religious practices can or should be accommodated in public schools. In fact, these

---

[1] Marilyn Johnson, General Counsel to the Chicago School Board, memorandum, 28 November 2001.
[2] John Weinberger, Counsel to Chicago Public Schools, phone interview with author, 25 March 2003.
[3] Council for American-Islamic Relations Research Center, "A Model for School District Religious Accommodation Policy," memorandum, (Washington, DC: CAIR, 1997), 1.

arrangements, typical of larger metropolitan school districts, often result from significant demographic changes, such as an influx of large and diverse immigrant populations. The reality of religious pluralism means public schools are now responsible for recognizing the religious needs of their students and responding to them affirmatively. It is a task that many schools have not yet felt compelled to take up, and as a consequence, any level of religious accommodation, if it exists, varies from community to community.

In light of this varied response to religious diversity, the project of my paper is two-fold. First, I will argue that the Chicago policy mentioned above expresses a model attitude for how public schools should approach the issue of accommodation for student religious practices. The policy represents an effort by the school district, students and parents to seek a middle ground that honors both the central role religion plays in the lives of many people within the community and the constitutionally mandated separation of church and state. By focusing on student religious practices, the policy is implicitly acknowledging the spiritual needs of the district's diverse student population as well as signaling a value for public institutions that are flexible and hospitable toward the religious needs of their constituents. While I regard the Chicago policy as a step in the right direction, its introduction is not without controversy. Religion and expressions of religious life are still at the center of a highly contentious public debate about their wider role in public schools.

Understandably, implementing a policy of religious accommodation raises important constitutional questions. The second goal of this paper is to address these concerns by examining the relevant Supreme Court decisions and evaluate their conclusions regarding the appropriate role of religion in public schools. Drawing on previous research, I will examine many Supreme Court decisions from the last century that

have tackled the question of church-state separation in public school settings. The Court's decisions in these cases, though often unsatisfactory to everyone involved, have always striven to balance the principle of separation with the religious freedom of individuals to practice their faith without government interference. My intent is to show that the accommodation of student religious practices is in agreement with the constitutional concerns expressed in the First Amendment. A policy of accommodation does not unavoidably represent a breech of the wall separating church and state, which as one Supreme Court Justice observed—"must be kept high and impregnable."[4] What must happen, however, is for the Court to acknowledge that the United States is a much more religiously diverse nation today than at any point in its 225-year history. Religious diversity requires that we adopt an attitude of flexibility in the way our public institutions operate and function within society.

Creating and defining a policy of religious accommodation, however, is not without significant challenges on several levels. As a student of religion, I am acutely aware that the topic of religion and spirituality is an issue that connects with people at the most intimate of levels. Some might claim that reducing this discussion to a policy issue does an injustice to the meaning that religion and matters of faith hold in the lives of many people. But, I think a balance between respecting religious beliefs and the institutional need for guidelines can be maintained. On the practical side of this challenge, a policy of accommodation, if it is to be created, will leave school officials to decide how best to create an atmosphere of reasonable accommodation for their students without violating the Establishment Clause. At the same time, it will be expected that none of the accommodations they do create—or fail to create—will hinder the student's free exercise

---

[4] *Everson v. Board of Education*, 330 U.S. 1 (1947).

of religion. Pursing such a cause will place school administrators and community leaders under enormous pressure to fashion a comprehensive and fair policy—one that understandably will have to undergo judicial review. Perhaps, it is because of the difficulty this task poses that the impetus to act understandably has been lacking. One of my hopes for this paper is that school officials, community leaders and those in the legal profession will begin to see what is at stake when schools, and public institutions, more generally, regard religion as an unwelcome participant in public life. My hope is that they would come to share Stephen Carter's observation that "religion and education share a characteristic that so many other human activities lack: they matter"—and it is because they matter that this issue is so important for us to consider.[5] To that end, this paper will begin by looking at the development of religious diversity and the historical relationship between religion and education. Following this discussion, I will examine the relevant Supreme Court cases that deal with issues of public education and religious accommodation. Finally, I will conclude with some observations about the problems of accommodation as well as some possible solutions.

Religious Diversity and Institutional Flexibility

As a starting point, it will be useful to examine the development of religious pluralism and some key milestones in the history of education. In her book, *A New Religious America*, Diana Eck poignantly offers us a snapshot of today's United States percolating with new and diverse religious communities. "The religious landscape of America," she writes, "has changed radically in the past thirty years, but most of us have not yet begun to see the dimensions and scope of that change, so gradual has it been and

[5] Stephen Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion*, (New York: BasicBooks, A Division of HarperCollins Publishers, Inc., 1993), 184.

yet so colossal."[6] While Eck welcomes this news with a sense of anticipation and optimism, she recognizes that American history has often greeted religious difference with hostility. From the anti-immigration laws of the nineteenth-century to Klu Klux Klan's anti-non-Christian religious rhetoric of the twentieth-century, discrimination based on race, culture and religion has shown itself to be a persistent and destructive force throughout American history.

Despite this bleak past, Eck is able to reflect positively on one of the nation's first institutions—the motto, *E Pluribus Unum*, or "From Many, One"—because it expresses a hope that the differences people bring to this nation from their countries of origin will ultimately serve as the foundation for a shared vision. In many respects, *E Pluribus Unum* powerfully captures the idea of that dream. The history of immigration, however, shows that the dream of unity was never realized as the *Unum* came to represent a harsh new world of coerced assimilation—an effort that often focused on cultural, linguistic and religious identities. How we as a nation recall this aspect of our shared history is ambivalent. Some like to see cultural assimilation as a positive force in which we are all made equal through a "melting pot" process. In contrast, others regard assimilation as a destructive force that hits at the heart of individuality and community identity.

My bias sides with this latter perspective. The history of assimilation in the United States has primarily been facilitated through government policies that reflected a general public distrust of people that are regarded as different. From the seventeenth-century until the present, public schools have been an unwitting accomplice in this effort. James Fraser notes the historical roots of this connection, when he observed the "fears about immigration and the general agreement about the need for a moral education and

---

[6] Diana L. Eck, *A New Religious America: How a "Christian Country" Has Become the World's Most Religiously Diverse Nation*, (San Francisco: HarperSanFrancisco, 2001), 1.

assimilation encouraged broad-based cooperation on public school issues."[7] Typically, schools have been the most effective tool for Christianizing and anglicizing new generations of American citizens and from their earliest creation, Protestant Christianity has had an integral and pervasive role in providing a well-rounded education.

At the time of the nation's founding, the marriage of Christian values and symbols with education posed few problems, since most communities were religiously homogenous and overwhelmingly Protestant. However, the rise of immigration, and in particular Catholic immigration, made the inclusion of these distinctly Protestant influences increasingly problematic for the new arrivals. Fraser observed that while "Catholics were tolerated, even welcomed, [it was] only on Protestant terms."[8] Such an arrangement was understandably an unsatisfying choice to many Catholic parents and their religious leaders. In response, Roman Catholics established a large and comprehensive parochial school system, but at a considerable cost to the religious community, who had to pay not only the taxes that supported public schools but also the tuition at their own schools. This heavy financial burden was the impetus for a sustained Catholic campaign to have Protestant influences excised from public schools.[9]

Although Catholics may have been the first organized force to push for the removal of these influences, they were by no means the only group to carry the movement forward. In subsequent decades, as public schools began to move away from explicit Protestant Christian references, many churches and denominations within the Protestant camp began to view the diluted and non-sectarian form of Christianity with growing suspicion. The unintended effect of this trend, in which overt forms of Protestant Christianity were

---

[7] James W. Fraser, *Between Church and State: Religion and Public Education in a Multicultural America*, (New York: St. Martin's Press, 1999), 40.
[8] Ibid., 51.
[9] Ibid., 112-113.

removed from schools, left open the door for more secularist thinking in public education. "The secularization of public schools," Fraser notes, "had been a long and slow process between the 1830s and the 1930s."[10] The process continues even today, since even twentieth-century schoolteachers and administrators, who widely regarded themselves as secular, "masked personal roots in an evangelical [Christian] tradition every bit as strong as their predecessors."[11]

Arguably, it was not until *Engel v. Vitale*, and a spate of other Supreme Court rulings, that Protestant ascendancy in public education was largely checked.[12] From *Engel* until the present, there has been a growing public trend to regard most public forms of religious expression with serious misgivings. This attitude did not develop overnight, but was the result of a number of events—the growing secularization of public institutions, growing religious pluralism, and a series of Supreme Court rulings that sought to remove religious expression from public life. It is in this milieu of social and legal change that public schools began to embody an attitude of hostility toward all religious practices—a sentiment Stephen Carter observed when he noted that "too often, our rhetoric treats the religious impulse to public action as presumptively wicked—indeed, as necessarily oppressive."[13]

In many respects, the removal of overt Christian influences and the growing antagonism toward anything religious were surface developments, since Christianity, as the dominate religious group, often took secular actions consistent with its religious claims as a means of achieving a religious objective. Consequently, public schools still acted as

---

[10] Ibid., 131.
[11] Ibid.
[12] *Engel v. Vitale*, 370 U.S. 421 (1962).
[13] Carter, *Culture of Disbelief*, 9.

powerful tools for enculturation and evange lization.[14] "For assimilation," Fraser observed, "no institution was more effective than the school and no ideology more powerful than Christianity."[15] The apparent separation of religion from public schools, however, has left us with the conflicting impression that schools without religious influences are fair, balanced and 'safe' spaces, free from religious indoctrination.

It is supposed that the unity we find in our equal access to education is a civic one "—a oneness of commitment to the common covenants of our citizenship out of the manyness of religious ways and worlds."[16] This impression is based in part on the belief that public schools situated in a multicultural setting, like America, are neutral in their educational and social missions. The reality, however, is quite different. Public schools regularly encourage conformity, whether linguistic, cultural or civic. Outside of the family, schools often represent the first steps a child takes toward citizenship and community membership. Schools are an integral part of the maturation process as children grow into adults and adolescents graduate into wider and wider social commitments. They are the crucible of civic formation, which means, "if we fail in our school policies and classrooms to model and to teach how to live with differences, we endanger our experiment in religious liberty and our unity as a nation."[17]

When public schools create an environment, in which students are coerced to abandon their cultural, linguistic and religious distinctiveness, they destroy something unique to the *Unum* that Diana Eck so movingly idealizes. At present, the changing circumstances of global migration have foiled some of the more harmful effects of

---

[14] Ibid., 91.
[15] Fraser, *Between Church and State*, 87.
[16] Eck, *New Religious America*, 31.
[17] First Amendment Center, *Finding Common Ground: A First Amendment Guide to Religion and Public Education*, ed. Charles Haynes, (Nashville: The Freedom Forum, 1998), 1.2.

assimilation, since immigrant communities are able to remain more connected with their points of origin through telephone, e-mail and transcontinental travel. The progress in technology means those sojourners, who come to the United States, either permanently or temporarily, are better prepared to maintain their ethnic, cultural or religious identities. Such a development, however, represents a radical departure from the past, since geographic isolation and economic status made it difficult, if not impossible, for newly arrived people to maintain meaningful connections with their heritage.

The Chicago policy on religious accommodation is a sign of this changing reality. Not only are immigrants enabled to resist the syncretistic pressures placed on their culture, language, and ethnic distinctiveness, but the policy also equips them with the resources, space and authority to nurture their religious beliefs. This does not only apply to non-Christian and non-Jewish groups, since the wave of immigration today is also bringing theologically more conservative Christian communities from the third world. As Philip Jenkins observed, these "Southern churches preach a deep personal faith, communal orthodoxy, mysticism, and puritanism, all founded on obedience to spiritual authority," which differs from many forms of Western-Christianity.[18] For a liberal North American Christian, their message "may appear simplistically charismatic, visionary, and apocalyptic," and although, they may benefit from Christian-friendly public institutions, they also face the same mainstream cultural currents that erode ethnic and religious identities.[19] It is, therefore, important that a policy of religious accommodation retains an open attitude toward religious pluralism, including the varieties of Christian practices as well. But, what is the likelihood that public institutions will embrace real religious

---

[18] Philip Jenkins, *The Atlantic Monthly* 290, v 3 (October 2002). See online article at: http://www.theatlantic.com/issues/2002/10/jenkins.htm
[19] Ibid.

pluralism anytime soon? As Eck observes, religious pluralism is "the new American dilemma" because "it poses challenges...that are as difficult and divisive as those of race."[20] While Eck characterizes this challenge as one for Christian churches, I think it is more appropriate to see it as a challenge for all public institutions that claim secular intentions. In the case of public schools, this means the challenge is adopting a policy of institutional flexibility.

Institutional Flexibility. When I talk about institutional flexibility, I am speaking more plainly about equal treatment and not special privileges. When a public, secular institution accommodates an individual's religious practice, it is not bestowing special rights or responsibilities on that individual or group. It is ensuring the relevance of the public institution's mission to everyone. For public schools, this means that students of faith can "come as [they] are, with all [their] differences, pledged only to the common civic demands of citizenship."[21] In other words, they can come and be themselves. The focus on flexibility, though, is not on what is taught to students in the classroom. Instead, change must take place with an institution's ability to adapt its practices according to the religious needs of students. How this is done will depend heavily on assessing the religious needs of students and a school district's resources. There will not be one solution that fits all circumstances. Although it might be tempting to reduce this discussion to a funding issue, I think institutions that resist change suffer from a poverty of creativity and not a lack of money. Financially, the costs of accommodation have often proven to be negligible.

If a policy of religious accommodation is to be achieved, practical considerations must be thought through. For example, how does one go about defining a religious

[20] Eck, *New Religious America*, 46.
[21] Ibid., 47.

practice? Is it more appropriate to use a definition from an organized religious body or do you rely on the practitioner's explanation? Rather than shy away from characterizing religiosity, I choose to define religious observances as those practices that represent a continuity of religious living for an individual. Such practices might differ within a religious group, or vary from individual to individual. A Muslim, for instance, might choose not to engage in the ritual *salat*. Should this personal choice be understood as typical of all Muslims? Similarly, if a Sikh adolescent boy decides to wear the ceremonial dagger, the *kirpan*, should a policy of accommodation anticipate that all Sikh boys would wear one? While variations within religious communities exist and individual observances may reflect personal choice, it is the continuity that the religious practice holds for each person that should be considered when deciding whether or not to accommodate a religious or spiritual practice.

The importance of continuity should not be understated. Reinhold Niebuhr saw religious practices and spirituality as the vehicle through which individuals and communities were able to experience this continuity. He once wrote that religion "is concerned not only with immediate values and disvalues, but with the problem of good and evil, not only with immediate objectives, but with ultimate hopes."[22] Religion troubles itself with answering questions about the meaning of existence and then seeking some unifying element within that meaning. Niebuhr goes on to say that a religion's ability to find a semblance of coherence "is constrained by its sense of a dimension of depth to trace every force with which it deals to some ultimate origin and to relate every purpose to some

[22] Niebuhr, Reinhold, *An Interpretation of Christian Ethics*, (New York: The World Publishing Company, 1935), 15.

ultimate end."[23] In his own way, he expressed his belief that religion explains our connection to the world.

Religious practices, therefore, are more than just assigning value to the 'things' we do. It is about recognizing that meaning is discovered, contemplated and understood through the activities themselves. A policy of accommodation can respect that meaning when it is not assessing religious practices in normative terms that imply value judgments are being made. Spiritual practices are neither good nor bad as long as they are regarded as meaningful activities for the student, who is to engage in them. When public schools fail to meet the religious needs of their constituents, we should remind ourselves that religious freedom in this country was hard won. Whether or not we are prepared to struggle for religious freedom, it is a battle that must be fought again and again, if genuine religious freedom is to remain a successful part of the American experiment.

Constitutional Issues of Accommodation

From a legal perspective, a policy of religious accommodation might seem constitutionally prohibited. After all, the Supreme Court has heard and issued rulings for a large number of church and state cases, in which the line separating the two are repeatedly drawn and redrawn. Undoubtedly, Chicago's policy to permit students the opportunity to engage in religious practices on school property, during instruction time, and with a degree of physical accommodation raises First Amendment questions about the policy's permissibility. As a matter of precedent, when questions regarding separation have been raised, the Supreme Court has shown itself to be consistent with its decisions in one important respect—it has repeatedly recognized that cases dealing with public education

---

[23] Ibid.

warrant special consideration and should not be subjected—without review—to the same rulings that effect society at-large.

Public schools are given special treated for several reasons. The first, and most important, distinction is that the Court recognizes schools are not public forums. They exist to meet particular societal needs and it is the government's responsibility to honor the public's trust in its role as an administrator. As Justice Brennan observed for the majority opinion of the Court in *Edwards v. Aguillard*, "families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family."[24] The second distinction the Court makes is to recognize that school-age children are vulnerable to a wide-range of influences. "The State exerts great authority and coercive power through mandatory attendance requirements, and because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure."[25] The Court has taken this vulnerability and the rights of parental choice seriously in many of its deliberations. Finally, the Court is sensitive to review each case in the context of a state's compulsory education laws. The Justices are aware the vast majority of families whose children attend public schools possess neither the financial resources to pay for a private and/or parochial education nor have the time, ability or desire to homeschool their children. For most, public education offers few choices, but Chicago's policy does provide parents some additional options in directing the educational experience of their children. For a policy of

---

[24] *Edwards v. Aguillard*, 482 U.S. 584 (1987).

[25] Ibid. While the principle issue addressed in *Edwards* was about the constitutionality of a state law requiring the inclusion of Creationism in the science curriculum and not about accommodation, his observations still hold true for our present discussion.

accommodation to be successful, however, it must be implemented in such a way so as to avoid violating the Establishment Clause of the First Amendment.

There are three issues, in particular, raised by a policy of accommodation that have important ties to other Supreme Court rulings. Specifically, they center on the court cases, which have addressed (1) prayer in public school, (2) 'release time' for religious instruction, and (3) physical accommodation on school property for religious activities. In all these areas, the Court has sought to address the question of whether the Establishment Clause had been violated by some action or omission of the state. As much as it might intuitively seem appropriate, this case is not about the free exercise of religion, even though Carter suggests, "the most significant aspect of the separation of church and state is not, as some seem to think, the shielding of the secular world from too strong a religious influence; the principle task of the separation of church and state is to secure religious liberty."[26] Those cases that deal with the Free Exercise Clause focus almost entirely on situations where a specific government policy or law infringes upon the free exercise of an individual or group. The Court has left the responsibility of changing institutions, their structures and mission statements, to the purview of the legislature. If it was a policy of religious accommodation's purpose to specifically prohibit some religious activity, then a Free Exercise claim could be made, but that is not the case here. In the context of this discussion, no such policy exists that could sustain a Free Exercise claim. This means the cases focusing on Establishment are the most salient for the present discussion because they address different aspects of the Chicago policy as well as the more general question about whether religious accommodation in public schools is even possible.

---

[26] Carter, *Culture of Disbelief*, 107.

Prayer in School. The first of these topics—prayer in public school—is perhaps one of the most litigated separation issues brought before the Court. In the course of hearing these cases, the Court has grown increasingly more restrictive in how it interprets the Establishment Clause. The case, *Engel v. Vitale*, was the first to address this issue. In its decision, the Court struck down a school policy that permitted the reading of a non-sectarian prayer at the start of every school day.[27] While the prayer was not compulsory, in the sense that students were required to repeat it or profess a belief in its words, they were required to be present while it was read. The Court concluded the offering of a prayer violated the Establishment Clause because an agent of the state was acting in a decidedly religious capacity. In addition, it rejected the argument that the prayer's voluntary and non-sectarian nature was sufficient to make it allowable under the Constitution. Instead, the Court argued that, "when the power, prestige and financial support of government is place behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain."[28] In the context of an educational atmosphere that encourages like-mindedness and conformity, this poses a danger that needs to be monitored and restricted when necessary. Justice Black, in his opinion for the majority, based the Court's ruling on the philosophy that all religious interests are best served when the government remains neutral. This arrangement, so the reasoning goes, ensures that the state is neither friendly nor hostile toward religion.

Engel was groundbreaking in that it set a loose standard for the Court to follow in later prayer cases and it represented the start of a trend to restrict the role and visibility of state supported prayer in public settings. The Court's decision in *Lee v. Weisman* cited

---

[27] *Engel v. Vitale*, 370 U.S. 421 (1962).
[28] *Engel v. Vitale*, 370 U.S. 432.

Engel extensively when it stuck down a school policy that permitted the reading of a prayer at a school function outside the course of a normal school day.[29] This time, however, the prayer was not recited during class instruction, but took place at a school sponsored, extracurricular activity—in this case, the school's graduation ceremony. As in *Engel*, the defenders of the policy stressed the nonsectarian and ecumenical nature of the prayer. They also pointed out that the graduation ceremony was entirely voluntary for the students and their families. They argued the longstanding tradition of the prayer, along with the solemnity of the occasion, made it no different from the Court's finding in *Marsh v. Chambers*, when it ruled in favor of allowing a state sponsored chaplain to offer a public prayer at the start of each legislative session based on the same two reasons.[30] The Court, however, rejected all of these claims and concluded that a graduation ceremony was manifestly a required activity. It further concluded the 'inconsistent' findings in *Marsh* and *Lee*, which the defense pointed to, were wholly reconcilable because the standard applied to public schools was different than a standard applied in a legislative setting.

Finally, the most recent case addressing prayer at a school function demonstrates how restrictive the Court's attitude has grown. In the case of *Santa Fe Independent School District v. Doe*, the Court again struck down a school policy which permitted prayer at a school sponsored, extracurricular activity.[31] In this instance, the event was a high school football game and it was a student, and not a member of the clergy, who offered a prayer at the start of every game. The defenders of the policy focused their argument on the students' role in offering the prayer. They pointed out that the student body used a balloting process to elected a fellow student, whose responsibility it was to write the prayer

---

[29] *Lee v. Weisman*, 505 U.S. 577 (1992).
[30] *Marsh v. Chambers*, 463 U.S. 786 (1983).
[31] *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000).

and then deliver it at the beginning of each game. The Court rejected this argument because it felt the arrangements made by the school to facilitate the student-initiated prayer were too pervasive for it to escape violating the Establishment Clause. While the Court pointed to the steps in the process, which had the appearance of excessive involvement, it did not stipulate where and how much 'assistance' (if any) could be given to student initiated prayer. The question of degree was left unresolved.

The above cases dealt with prayer that took place in a public setting and with the support of school officials. What bearing does that have on private, student initiated prayer? Arguably, the parallels are hard to draw between the two situations. However, these cases are useful because, on one hand, they reflect the attitude of the Court toward prayer, in general, and on the other hand, they show how the Court has been concerned about the appearance of school participation when schools sanction prayer of any kind. Would the Court, then, object to prayer in public school if it were conducted in private? It is not certain how the Justices would rule if a case like this came before them today. They would have to reconcile the differences between a prayer offered in private as opposed to one made publicly and a prayer initiated by a student rather than one connected to a school sponsored event. Currently, students are not restricted from praying silently in their seat just before a test, for example. What about a group prayer that is audible? Muslim prayer, for instance, is not entirely silent and requires a measure of space when performed. The varieties of prayer, not yet considered by the Court, might prompt the Justices to see the issue before them as asking a different constitutional question—one that would require a fresh answer and different standard against which its constitutionality could be measured.

Release Time Program. The second topic—release time for religious instruction—came to the Court's attention in *Zorach v. Clauson*.[32] The plaintiffs in the case challenged the constitutionality of a New York law, which permitted parents to request the release of their children from class time, so that they could attend religious instruction or devotional exercises at a site located off school property. The plaintiffs claimed the compulsory nature of public education was being used to support the goals of the participating religious organizations. Without the release time, they argued, religious instruction would be all but unrealistic. After weighing the arguments of both parties, the Court affirmed the constitutionality of the law and New York's time-release program was allowed to continue. In the course of its deliberations, the Court reassessed its earlier rulings, which stressed strict government neutrality. They reasoned that since the policy was fair and open to any religion or religious tradition (although in 1952 that meant a fairly small number of participates), it could not be construed as advancing religion. The Court also found no substantiated evidence of coercion or inappropriate use of public funds or facilities to aid religion beyond what was thought reasonable. Justice Douglas' opinion for the Court stated the Justices found "no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight *against* efforts to widen the effective scope of religious influence."[33] If the Court had ruled in favor of the plaintiffs, it would have in effect endorsed "a philosophy of hostility to religion," which was a point of view it was unwilling to read into the Bill of Rights.[34]

A policy of accommodation would reasonably include a release time program similar to the program described in *Zorach*. Such a policy would permit students to

---

[32] *Zorach v. Clauson*, 343 U.S. 306 (1952).
[33] *Zorach v. Clauson*, 343 U.S. 314; italics mine.
[34] *Zorach v. Clauson*, 343 U.S. 315.

engage in some religious activity during official instructional time provided their parents' permission was given. Also, students would not be penalized for missing class. Teachers would be expected to give their students the opportunity to make-up work or complete alternative assignments. A policy of accommodation, however, would be more ambitious then the program described in *Zorach*. Students, for example, would not have to leave school property when they engage in their religious activity. This is an especially critical detail because the Court's decision in *Zorach* gave considerable weight to the requirement that students leave school property when engaging in their religious activities. If the Court were forced to consider an open-ended policy of accommodation, how would it rule? Based on *Zorach*, the Court would be open to the idea of time off, but a policy that directs school administrators to provide physical space on school campuses, would most likely raise constitutional concerns. A narrow read of *Zorach* might regard this concern as a stumbling block, but a more broad reading might instead characterize *Zorach's* principle concern as having to do with the amount of involvement school officials would have in administering such a program. If the Court's sensitivity is more geared toward avoiding the excessive involvement of public officials in religious activities, as in the earlier decisions dealing with prayer, than providing time off and space would most likely be allowable.

Public Space / Sacred Space. Even before *Zorach*, the Court addressed the matter of permitting religious activity on public school property in *Illinois ex rel McCollum v. Board of Education*.[35] The plaintiff in the case filed suit against the local school district because it permitted teachers, funded by religious organizations, to come onto public school campuses and provide religious instruction. Only the students, whose parents requested the extra instruction, were permitted to participate. The program set aside a

[35] *Illinois ex rel McCollum v. Board of Education*, 333 U.S. 203 (1948).

room for thirty minutes each week during school hours expressly for this purpose. After hearing the case, the Court ruled in favor of the plaintiff. It reasoned that the integration between the state's compulsory education system and religious instruction violated the separation principle embodied in the First Amendment. While the use of school property was an integral part of the Court's substantive concern, it was the school official's participation in the religious instruction that was the cause of the greatest discomfort. The Justices concluded that not only did the religious organizations have facilities to engage in their religious educational activities, but they also had a captive audience, whose attendance was enforced by teachers and administrators. The original policy endorsing religious instruction had the effect of turning the public school into a religious one.

While the Court came down on the side of strict separation in the *McCollum* case, they modified that position somewhat in *Board of Education v. Mergens*.[36] In *Mergens*, the Court overturned a school district's decision not to recognize a student-initiated Christian club. Recognized student groups were granted use of classroom space after school hours as well as access to bulletin boards and the public address system for the purpose of making announcements. The school administration felt the nature of a religious club did not fall within the criteria they used to determine which after-school student organizations were given official status. They reasoned that the endorsement of such a group would violate the Establishment Clause. Their criteria stipulated that only clubs, which are related to the curriculum, were allowed; however, the Court found the definition of 'curricular' was sufficiently broad enough that school officials were faced with a choice of either approving virtually every student club or none at all. In selecting not to recognize the religious club, the school was, in effect, violating its own policy of having a 'limited

---

[36] *Board of Education of the Westside Community Schools v. Mergens*, 496 U.S. 226 (1990).

open forum' and denying Mergens of her equal protection under the law. When the Court compelled the school to recognize the Christian club, it was effectively endorsing the group's involvement in the wider educational mission of the high school.

The Endorsement Test. The Supreme Court has never made a black and white distinction between what is permitted or not permitted in a school setting nor has it generally reviewed cases as mere single-issue concerns. The various majority, concurring and dissenting opinions of the Justices reflect the complexity of the issues that come before them as well as their struggle to fashion fair and just decisions. At times the Court has followed a philosophy of strict separation while at other times it has chosen to be more accommodating. Since 1971, the Court has applied a uniform standard to test whether a law or government policy violates the Establishment Clause. The Lemon test, as the name suggests, is named after *Lemon v. Kurtzman*. In this case, the Court agreed to hear a legal challenge to two separate states' statutes, which allowed for the dispensing of government funds to supplement the salaries of private (mostly religious) schoolteachers.[37] Both state policies, which the plaintiffs objected to, were created to alleviate the discrepancy in pay between public and private schoolteachers—at least for those teachers who taught secular subjects.

The *Lemon* decision produced a three-pronged establishment test, which, if any criteria were not met, meant the law or policy in question violated the Establishment Clause. The conditions of the test are: "first, the statue must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion... [and] finally, the statute must not foster 'an excessive government

---

[37] *Lemon v. Kurtzman*, 403 U.S. 609 (1973).

entanglement with religion.'"[38] The Justices understood that absolute separation was not possible and that some interaction between government and religion was inevitable. They read into the Constitution a decree "that religion must be a private matter for the individual, the family, and the institutions of private choice, and that while some involvement and entanglement are inevitable, lines must be drawn."[39] The Lemon test was intended to determine whether laws and policies had crossed what was generally thought to be an ill-defined line between church and state. The Court's reliance upon the test has given it an easy method of assessing Establishment cases fairly. Stephen Carter, however, regarded this "fair" method of adjudicating cases as fundamentally anti-religious because the results often were at the expense of the free practice of religion.[40] Even when the tenor of how the Lemon test was applied changed after *Agostini v. Felton*, Carter still regarded the Court's attitude as a hostile one.[41] In deciding *Agostini*, the Court reassessed how strictly the test needed to be used because the anti-religious effects of the test were becoming more and more apparent. The Justices ultimately concluded that it did not require such stringent application and that the line separating church and state could be blurred somewhat. Government programs, such as limited aid to students enrolled at sectarian schools, were reconsidered and deemed constitutional.

Under *Agostini* the Court did not really embraced a new philosophy or abandoned *Lemon*, but rather, it came to see the strict separation of church and state as an unrealistic objective—one that ultimately made the state hostile to the free exercise of religion. In light of this new attitude, it would be difficult to predict the Court's reaction to a broad policy accommodating student religious activities. However, if the Lemon test post-

---

[38] *Lemon v. Kurtzman*, 403 U.S. 613.
[39] *Lemon v. Kurtzman*, 403 U.S. 626.
[40] Carter, *Culture of Disbelief*, 113.
[41] *Agostini v. Felton*, 522 U.S. 803 (1997).

Agostini was applied to the Chicago policy, the Court's previous application of the test suggests that a policy of religious accommodation would pass. While the policy serves a religious purpose, it is one that is no different from other reasonable arrangements approved by the courts. The issue of entanglement seems moot since a policy of accommodation gives no role to religious organizations or their representatives and by all accounts, the interaction a policy facilitates is limited to school administrators, parents and students. Perhaps is it because of this limited interaction that a policy of accommodation does nothing to advance or inhibit religious practice. If anything, such a policy would act to redress one of the problems created by compulsory education by introducing a sense of choice in how children can integrate faith with their life as a student.

While the Court might rule favorably for a policy of religious accommodation simply based on precedent, it too must adapt a more open attitude toward religious practices and the importance of religious faith. Seldom does the Court consider the fact that religious and cultural traditions, which come late in the history of the United States, fail to benefit from the structures and institutions that were shaped by earlier communities. Even today, the institutional nature of public schools reflects a European model adapted for American Protestant Christian needs. Even though we regard the current structure as secular, it in fact honors and perpetuates an earlier religious culture that had distinct concepts of time and space. Had Muslims founded this nation and not Christians, schools would have naturally reflected a Muslim worldview by accommodating Islamic religious practices. Daily breaks permitting children to pray the *salat* would have been institutionally preserved long after secularism had robbed those daily interruptions of their religious meaning. A policy of accommodation, such as Chicago's, begins to address this bias because it recognizes that public schools are institutions that were not created in a

religiously neutral world, but one dominated by Protestant Christianity. It recognizes that a system of education can impinge on a minority's religious freedom just as easily as it can benefit the practices of an established majority.

The Court's efforts to find a solution that balance the requirements of the First Amendment have produced mixed results and its haphazard rulings leave little doubt that the debate will continue unless the Justices are able to fashion a more durable standard. To do so, they must begin to recognize that our nation is a far more religiously diverse one than what the founding fathers could have even imagined when they crafted the Constitution. The America of today exists in the fullness and richness of its diversity because the words and ideas they uttered so long ago transcended the experiences and aspirations of their eighteenth-century world. Today, words like freedom and liberty still carry forward a vision that extends well beyond our own limited possibilities. What this means for us now is that the Constitution does not need to be reinterpreted or recreated, but it should be approached with the understanding that America is a multi-cultural, multi-religious nation that demands respect for unique ways of life. As the Williamsburg Charter points out, there is "evident opportunity in the growing philosophical and cultural awareness that all people live by commitments and ideas, that value-neutrality is impossible in the ordering of society, and that we are on the edge of a promising moment for a fresh assessment of pluralism and liberty."[42]

Religious Practices and Problems of Accommodation

A policy of religious accommodation is probably the most appropriate response to religious pluralism. The Supreme Court, while at times erratic in its rulings on church and

---

[42] First Amendment Center, *Finding Common Ground*, A.2. Re-quoting the Williamsburg Charter.

state issues, has shown a willingness to accept forms of accommodation so long as they do not require an agent of the state to participate or facilitate the religious activity. The Court has always been sensitive to avoid even the appearance of entanglement, which it sees as problematic as actual involvement. Provided that school officials steer clear of any hint of excessive involvement, a broad policy of religious accommodation would honor the constitutionally mandated separation of church and state. What needs to happen, however, is for public schools to adopt an attitude of flexibility that shows our children how to live with religious differences.

While this is not a curricular issue, there is a tendency to cast it as one. David Purpel, for example, recognizes this curricular focus as one often championed by the religious right. Absent the charged political and religious rhetoric, Purpel sees the purpose of educational discourse as focusing "on the urgent task of transforming many of our basic cultural institutions and belief systems," since the general attitude is to regard "the prime function of education as the transmission of culture and the preservation of its values."[43] His response and others, like him, are sympathetic to the tension that exists between religion and public schools; however, their emphasis never quite escapes the focus on institutional practices and curricular requirements that harbor anti-religious points of view. The importance of allowing students to engage in religious practices has not been voiced as a substantive concern.

What is illustrative of Purpel's argument, however, is the tendency among people, who advocate for and against religion in the curriculum, to conflate religious practice with religious education or vice versa. And while it is tempting to speak about models of

---

[43] David Purpel, *The Moral and Spiritual Crisis in Education: A Curriculum for Justice and Compassion in Education*, Critical Studies in Education Series, (New York: Bergin and Garvey, 1989), 3, 10.

religious education that are not ideologically charged or bent on creating converts , it is not the project of this paper. Instead, it is worthwhile to point out that while scholars, like Purpel, are not hostile toward the idea of religious accommodation, they are, in fact, still working, within a decidedly western-Christian worldview—one that does not see what is at stake in an increasingly diverse religious society. So, when Purpel observes that "our cultural [and educational] crisis is a crisis of meaning," he unknowingly misses the special meaning religious practices often have for students, and instead, continues to see what students learn in school and the values they are exposed to in the classroom as the principle ways that meaning is created.[44]

Up until this point, I have refrained from stating too specifically what sort of religious practices I am envisioning a policy of accommodation would encompass. The Supreme Court cases discussed earlier broadly allude to some common practices within many Christian traditions—public prayer, club gatherings or associations, and religious instruction. Understandably, offering specific examples of religious practices can be problematic, since the variation of activities will differ among religious groups and within religious communities. As a consequence, it would be an impossible task to anticipate every kind of practice that students might engage in and then fashion a policy to meet such contingencies. However, I have sketched a few scenarios to illustrate how school officials could begin to approach and resolve situations where a policy of accommodation is in place.

Scenario 1: Dress Codes. What a student wears to school, whether done for a religious purpose or not, does not often present itself as a problem at many public schools, since schools in general do not have uniform requirements. Aside from policies aimed at

---

[44] Ibid., 27.

prohibiting gang-related symbols or obscene and offensive material, most school officials are unconcerned about what students wear to class. In an ideal situation, such an open attitude would mean clothing that has a cultural or religious significance would be permitted. The reality, however, is quite different, since students are routinely instructed to remove articles of clothing that school officials may or may not deem as appropriate for school use. The Council for American-Islamic Relations (CAIR), for example, routinely documents instances when Muslim girls are told to remove their *hajib* during school hours or for certain school activities, like Physical Education class.[45] Many Muslims regard the wearing of a *hajib* as a holy obligation. This is reminiscent of one common Jewish experience, when boys were routinely instructed to remove their yarmulkes while at school. Unfortunately, it is not possible to fully understand the scope of this type of discrimination, since no comprehensive study has been done and the government does not track this information. At best, I can only offer anecdotal examples; however, it would not require a stretch of the imagination to envision this as a problem facing many religious communities, which require distinctive clothing for religious reasons. "After race," Eck observed, "the most visible signal of difference is dress, and this is where religious minorities become visible minorities."[46] A policy of religious accommodation would ideally honor the religious continuity expressed in the adoring of certain kinds of clothing, and therefore permit their unfettered use in public schools.

Arguably, the above kinds of clothing represent benign forms of dress, but what happens when a religious article of clothing presents a hazard to other students? One example that comes to mind, which fits this dilemma, is the Sikh *kirpan*. A *kirpan* is the ceremonial dagger that adolescent boys are required to wear as a form of religious

---

[45] See http://www.cair-net.org/civilrights/ for information about discrimination and complaints.
[46] Eck, *New Religious America*, 297.

observance. Understandably, administrators should be concerned that students carrying a weapon at school pose a danger to themselves and others. The recent spate of school violence only heightens this concern. How would a policy of religious accommodation operate in a situation like this? First, the policy would not prohibit school officials from evaluating any safety concerns they have, but would restrain them from determining whether the article of clothing is cultural or religious. Second, the policy would anticipate that the student and his parents are able to explain (not justify) the clothing's religious significance. The burden would rest upon them to clarify how wearing a *kirpan* represents a continuity of religious living for the student. The standard for this explanation does not need to be high in this respect, but it is important that school officials understand what exactly it is that they are accommodating. Finally, the policy must seek a solution that respects the religious practice of Sikhs as well as the need to uphold school safety.

Unfortunately, it took the 9th Circuit Court in 1994 to fashion a solution for one California school district, which had barred three Sikh students from wearing their *kirpans* to school.[47] Recognizing the concern of the school to maintain a safe environment, the Appellate Court ordered the school district to make reasonable efforts to accommodate the Sikh practice. The solution was ingenious, in that it did not require the student to remove the dagger, but instead ordered the *kirpans* to be sown into their sheaths to address the district's concerns about safety as well as its larger policy of restricting the possession of weapons on school campuses. This example shows that solutions are best available to school administration, parents and students when they engage in constructive dialogue to address the religious needs of students. Having an open and broad policy of religious accommodation is the best way to accomplish this. While the solution presented in this

---

[47] Ibid., 326-27. Eck is citing *Cheema v. Thompson*, 67 F.3d 883 (9th Cir 1995).

example represents an ideal scenario, it should not be thought of as the exception, since a policy of accommodation can only be successful when it exists in a flexible and creative environment.

Scenario 2: Prayer. Prayer is perhaps the most problematic of examples because the Supreme Court has issued so many rulings concerning its practice and place in public schools. However, the Court has only really heard cases concerning Christian prayer practices and not those from other faith traditions. As mentioned earlier, many Muslims participate in five prayer sessions throughout the day. Perhaps the most difficult aspect in understanding the significance of the *salat* in Islam has more to do with our westernized notions about the meaning and purpose of prayer as a spiritual exercise. Muslim prayer, just as in the familiar Judeo-Christian traditions, is regarded as a sacred act—a chance to communicate with God. But, in Islam, it is more than that. As a consecrated act, it also speaks to the very heart of Muslim identity and what it means to be faithful. One scholar observed, "whoever wishes to gain a clear idea of the significance of the *salat* must ask the question: 'what does it mean to be Muslim?'"[48] On a more functional level, however, the prayer is regarded as "an immense personal and communal commitment to order, punctuality, change and coherence" and is, in a sense, "the meeting point between the sacred and secular in Muslim life."[49] Most importantly, though, the *salat* is the means, by which the faithful help to cultivate the virtues of patience and perseverance in their daily life.

Characteristic of most rituals, the *salat* also outlines specific steps to be taken before and during the execution of the prayer. The first step focuses on the ablution, or the physical cleansing of the face, hands and feet. The second involves the audible recitation

---

[48] *E.J. Brill's First Encyclopedia of Islam 1013-1936*, 1987 ed., s.v. "salat."
[49] *The Oxford Encyclopedia of the Modern Islamic World*, 1995 ed., s.v. "salat."

of a 'declaration of intention', which is also regarded as the way to mentally purifying one's mind in preparation for prayer.[50] Once both cleansing steps are taken, the Muslim is prepared to begin the *salat*, which is distinguished by seventeen separate parts.[51] All adult men and women, who are physically and mentally capable of performing the five daily prayers, are obliged to do so—although dispensations are granted in specific situations, such as illness or travel. Children, on the other hand, do not fall under the same obligation if they have not yet reached puberty. When and where possible, the prayers should be performed in a communal setting along with other believers, although solitary prayer and praying in a public setting is also permitted. In theory, the willful failure to perform the *salat* carries serious consequences, including being labeled a *kafir*, or infidel.[52] A missed prayer, whether for justifiable reasons or not, does not release the believer from their obligation to perform the *salat* at some point in the future.

Given the importance and seriousness, with which the *salat* is performed, it is understandable that Muslim students of appropriate age would want to uphold the obligations and requirements of their faith. But, how far must a public school district go to accommodate their practices? It is worth noting as a purely practical consideration that only one of the prayers takes place during school instruction, specifically the noon prayer; however, the range of times the *salat* can be performed varies according to the time of year and length of day. For example, it can take place as early as 11:28 a.m. or as late as 12:51 p.m. Accommodation and scheduling problems are further complicated during the winter months when the days are shorter. As a result, there is the possibility that the noon *salat*

---

[50] Ibid. The Muslim begins the ablution with "In the name of God, the Merciful, the Compassionate. I am proposing to perform ablution so that God may be pleased with me" and concludes with "I bear witness that there is no god but Allah; He has no partner, and I bear witness that Muhammad is His servant and Messenger."
[51] Ibid.
[52] *E.J. Brill's First Encyclopedia of Islam 1013-1936*, 1987 ed., s.v. "salat."

would be closer bracketed by the morning and late afternoon prayers, which means that students might have to engage in their devotional obligations at school three times a day, instead of just once. Whether or not this will actually happen, remains entirely dependent on when a district begins and ends their school day.

How would a policy of religious accommodation operate in a situation where students request time off from class and a place to prayer? First, the policy would not restrict school officials from evaluating specific time constraints or space issues, but it would restrain them from determining the validity or usefulness of the devotional prayer. Second, the policy would expect students and their parents to explain the religious significance of the devotional exercise, why a specific time is necessary and the purpose for a private space to be set aside. The burden would not rest upon the school official to fully comprehend how a ritual devotional practice represents a continuity of religious living for the student, but the official needs to understand what exactly it is that is being accommodated on public school property. Finally, the policy must not be seen as binding on either party. If a school, for example, does not have physical space to accommodate students who wish to pray, then it should not see itself as being forced to make the space by emptying a classroom or displacing workers from their offices. Likewise, students and parents should reflect critically on the request they are making of public schools. While religious beliefs do not lend themselves easily to a discussion about being flexible, it would be well for them to examine how crucial and necessary their faith practice is, in light of the constraints faced by public institutions.

The two examples that I have given are limited by my imagination and in some ways cannot adequately communicate all of the depth and nuances that one would encounter in these situations. An urban center will have its own challenges in

implementing a policy of accommodation that will be markedly different from a suburban one. In contrast, a rural mid-Western community may find diversity and religious pluralism an unfamiliar concern. As a consequence, this argument in favor of accommodation may not serve any particular purpose for them. But, for those localities where religious minorities exists, and accommodation is most observably needed, a policy of accommodation has the potential to make school environments welcoming and open public institutions. In that openness, schools must never lose their institutional character, their focus on education. Even as they play host to student needs, schools must retain their educational mission lest the public school evolves into multiple religious ones.

Concluding Remarks

At the start of this paper, I set out to make a case that public institutions, and specifically public schools, should adopt an attitude of flexibility when it comes to accommodating student religious practices. While this project can be strictly viewed from any number of perspectives—namely law, educational theory or organizational management—I have decided to look at it from the viewpoint as a student of theology. Approaching the subject matter from this perspective may poses problems for the legal scholar, professional educator and even the dedicated theologian, who might find my analysis either cursory or my conclusions unrealistic. I do not write as a specialist in any of these fields, but rather as a concerned citizen and a member of a community that believes religion and education matter. And so I ask everyone that has a stake in this issue: What does it say then when we fail to accommodate the religious needs of students? In addressing this question, I have attempted to show first that accommodation of students' religious practices is a principle inline with constitution concerns about the separation of

church and state. Even though this policy will not assuage the tension surrounding the principle of separation, it will begin to address the problem that schools are not neutral when they abolish religion from their campuses. Secondly, I have tried to suggest that the accommodation of religious practices is not the same as facilitating those practices. It is my hope that parents, students, teachers and administrators will not see it as the school's job to help students become better religious people. In fact, the tension between the religious practice of the student and rigidity of an institution should always be there, but it should never be absolute or inflexible. Accommodation implies something that many people may find objectionable: it requires effort and action. It is not passive. The teacher, who accommodates a student's absence, for example, must make some effort in the form of an alternative assignment or additional instruction time. The parent, who would request any consideration for their child's religious needs, must critically reflect on the appropriateness of the request as well as be able to articulate its significance. It would be misleading to believe that laws and public institutions stand on one side of a wall that separates them from the religious practices of its citizenry. As Carter pointed out, "the wall has to have a few doors in it."[53] The Chicago policy on religious accommodation represents one such door. It is my hope that every school district would adopt a forward looking and open policy that ensures and respects every student's religious and spiritual needs.

[53] Carter, *Culture of Disbelief*, 109.

Bibliography

Bellah, Robert N., Richard Madsen, William M. Sullivan, Ann Swidler and Steven M. Tipton. *Habits of the Heart: Individualism and Commitment in American Life*. Berkeley: University of California Press, 1985.

Carter, Stephen. *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion*. New York: BasicBooks, A Division of HarperCollins Publishers, Inc., 1993.

Council for American-Islamic Relations Research Center. *A Model for School District Religious Accommodation Policy*. Washington, DC: Council for American-Islamic Relations, 1997.

Eck, Diana L. *A New Religious America: How a "Christian Country" Has Become the World's Most Religiously Diverse Nation*. San Francisco: HarperSanFrancisco, 2001.

First Amendment Center. *Finding Common Ground: A First Amendment Guide to Religion and Public Education*. Edited by Charles Haynes. Nashville: The Freedom Forum, 1998.

Fraser, James W. *Between Church and State: Religion and Public Education in a Multicultural America*. New York: St. Martin's Press, 1999.

Jenkins, Philip. "The Next Christianity." *The Atlantic Monthly* 290, no. 3 (October 2002).

Johnson, Marilyn. Memorandum from the General Counsel to the Chicago School Board. 28 November 2001.

Marty, Martin. *Education, Religion and the Common Good: Advancing a Distinctly American Conversation About Religion's Role in Our Shared Life*. San Francisco: Jossey-Bass, 2000.

Niebuhr, Reinhold. *An Interpretation of Christian Ethics*. New York: The World Publishing Company, 1935.

Nord, Warren. *Religion and American Education: Rethinking a National Dilemma*. Chapel Hill: The University of North Carolina Press, 1995.

Purpel, David. *The Moral and Spiritual Crisis in Education: A Curriculum for Justice and Compassion in Education*. Critical Studies in Education Series. New York: Bergin and Garvey, 1989.

Sullivan, Winnifred Fallers. *Paying the Words Extra: Religious Discourse in the Supreme Court of the United States*. Religions of the Word Series, ed. Lawrence Sullivan. Cambridge: Center for the Study of World Religions, 1994.

Thiemann, Ronald. *Religion in Public Life: A Dilemma for Democracy*. Washington, DC: Georgetown University Press, 1996.

U.S. Department of Education
Office of Educational Research and Improvement (OERI)
National Library of Education (NLE)
Educational Resources Information Center (ERIC)

ERIC

REPRODUCTION RELEASE

(Specific Document)

I. DOCUMENT IDENTIFICATION:

Title: Sacred Arts, Secular Spaces: Why Public Schools Should Follow a policy of religious accomodation

Author(s): Kyle Stewart McJunkin

Corporate Source:

Publication Date: March 2003

II. REPRODUCTION RELEASE:

In order to disseminate as widely as possible timely and significant materials of interest to the educational community, documents announced in the monthly abstract journal of the ERIC system, *Resources in Education* (RIE), are usually made available to users in microfiche, reproduced paper copy, and electronic media, and sold through the ERIC Document Reproduction Service (EDRS). Credit is given to the source of each document, and, if reproduction release is granted, one of the following notices is affixed to the document.

If permission is granted to reproduce and disseminate the identified document, please CHECK ONE of the following three options and sign at the bottom of the page.

The sample sticker shown below will be affixed to all Level 1 documents

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL HAS BEEN GRANTED BY

Sample

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

Level 1

☒

Check here for Level 1 release, permitting reproduction and dissemination in microfiche or other ERIC archival media (e.g. electronic) and paper copy.

The sample sticker shown below will be affixed to all Level 2A documents

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL IN MICROFICHE AND IN ELECTRONIC MEDIA FOR ERIC COLLECTION SUBSCRIBERS ONLY, HAS BEEN GRANTED BY

Sample

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

2A

Level 2A

1

☐

Check here for Level 2A release, permitting reproduction and dissemination in microfiche and in electronic media for ERIC archival collection subscribers only

The sample sticker shown below will be affixed to all Level 2B documents

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

Sample

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

2B

Level 2B

1

☐

Check here for Level 2B release, permitting reproduction and dissemination in microfiche only

Documents will be processed as indicated provided reproduction quality permits. If permission to reproduce is granted, but no box is checked, documents will be processed at Level 1.

I hereby grant to the Educational Resources Information Center (ERIC) nonexclusive permission to reproduce and disseminate this document as indicated above. Reproduction from the ERIC microfiche or electronic media by persons other than ERIC employees and its system contractors requires permission from the copyright holder. Exception is made for non-profit reproduction by libraries and other service agencies to satisfy information needs of educators in response to discrete inquiries.

Sign here, → please

Signature: Kyle McJunkin

Printed Name/Position/Title: Kyle Stewart McJunkin

Organization/Address: 11601 New Zealand St. Cypress CA 90630

Telephone: 714/220-8258 FAX:

E-Mail Address: kmcjunkin@uclaalum.edu Date: 11/6/03

(over)

III. DOCUMENT AVAILABILITY INFORMATION (FROM NON-ERIC SOURCE):

If permission to reproduce is not granted to ERIC, *or*, if you wish ERIC to cite the availability of the document from another source, please provide the following information regarding the availability of the document. (ERIC will not announce a document unless it is publicly available, and a dependable source can be specified. Contributors should also be aware that ERIC selection criteria are significantly more stringent for documents that cannot be made available through EDRS.)

Publisher/Distributor:
Address:
Price:

IV. REFERRAL OF ERIC TO COPYRIGHT/REPRODUCTION RIGHTS HOLDER:

If the right to grant this reproduction release is held by someone other than the addressee, please provide the appropriate name and address:

Name:
Address:

V. WHERE TO SEND THIS FORM:

Send this form to the following ERIC Clearinghouse:

ERIC/CHESS
2805 E. Tenth Street, #120
Bloomington, IN 47408

However, if solicited by the ERIC Facility, or if making an unsolicited contribution to ERIC, return this form (and the document being contributed) to:

ERIC Processing and Reference Facility
4483-A Forbes Boulevard
Lanham, Maryland 20706

Telephone: 301-552-4200
Toll Free: 800-799-3742
FAX: 301-552-4700
e-mail: ericfac@inet.ed.gov
WWW: http://ericfacility.org

EFF-088 (Rev. 2/2001)